

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #6	CCRB Case #: 201709602	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wed, 10/25/2017 12:50 PM	Location of Incident: [REDACTED]	Precinct: 09	18 Mo. SOL 04/25/2019	EO SOL 4/25/2019	
Date/Time CV Reported Mon, 11/13/2017 6:50 AM	CV Reported At: Other City agency	How CV Reported: E-mail	Date/Time Received at CCRB Mon, 11/20/2017 10:59 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POF Jacqueline Cifuentes	05297	[REDACTED]	PSA 4
2. POM Daniel Caparelli	06269	[REDACTED]	PSA 4
3. LT Kenneth Herrarte	00000	[REDACTED]	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. CPT John Potkay	00000	[REDACTED]	PSA 4
2. SGT Anthony Peters	03997	[REDACTED]	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A. POF Jacqueline Cifuentes	Abuse of Authority: Police Officer Jacqueline Cifuentes entered § 87(2)(b) in Manhattan.	[REDACTED]
B. POM Daniel Caparelli	Abuse of Authority: Police Officer Daniel Caparelli entered § 87(2)(b) in Manhattan.	[REDACTED]
C. POF Jacqueline Cifuentes	Abuse of Authority: Police Officer Jacqueline Cifuentes threatened to arrest § 87(2)(b)	[REDACTED]
D. LT Kenneth Herrarte	Abuse of Authority: Lieutenant Kenneth Herrarte searched § 87(2)(b) in Manhattan.	[REDACTED]
E. POF Jacqueline Cifuentes	Abuse of Authority: Police Officer Jacqueline Cifuentes entered and searched § 87(2)(b) in Manhattan.	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

On November 12, 2017, § 87(2)(b) filed this complaint with 311 and it was subsequently referred to IAB. This case was received at the CCRB on November 20, 2017.

On October 25, 2017, PO Jacqueline Cifuentes and PO Daniel Caparelli of PSA 4 went to § 87(2)(b)'s home, located at § 87(2)(b) in Manhattan, regarding a domestic incident involving § 87(2)(b) and her grandson, § 87(2)(b) that had occurred a few days prior. PO Cifuentes and PO Caparelli entered § 87(2)(b)'s apartment, located at § 87(2)(b) in Manhattan (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) and her boyfriend Aaron § 87(2)(b) arrived at the apartment soon after the officers. § 87(2)(b) began arguing with PO Cifuentes about why the officers were at the apartment. PO Cifuentes told § 87(2)(b) "If the house ain't right, I'm going to arrest you and put your mom in a home," (**Allegation C: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was transported to § 87(2)(b). PO Cifuentes told § 87(2)(b) that she would be arrested if she went into the ambulance with § 87(2)(b) (**subsumed under Allegation C**). Lt. Kenneth Herrarte responded to the hospital. Lt. Herrarte and PO Cifuentes had § 87(2)(b) sign a consent to search form, and searched her apartment (**Allegations D and E: Abuse of Authority, § 87(2)(g)**). § 87(4-b), § 87(2)(g)

NYCHA video was beyond retention when this complaint was received at the CCRB. This case was consulted with a CCRB attorney on January 10, 2018.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Jacqueline Cifuentes entered § 87(2)(b) in Manhattan.

Allegation (B) Abuse of Authority: Police Officer Daniel Caparelli entered § 87(2)(b) in Manhattan.

§ 87(2)(b) provided a phone statement in Spanish to Inv. Diana Vale, on January 17, 2018, with the assistance of § 87(2)(b) (Board Review 01). § 87(2)(b) stated repeatedly during her statement that she did not remember very many details about this incident. On October 25, 2017, PO Cifuentes and PO Caparelli arrived at § 87(2)(b) in Manhattan, and arrested § 87(2)(b)'s grandson. § 87(2)(b) did not give the officers permission to enter her apartment. § 87(2)(b) did not recall if she spoke with the officers. § 87(2)(b) did not know who allowed the officers inside. § 87(2)(b) leaves her door unlocked always.

§ 87(2)(b) was interviewed at the CCRB on December 15, 2017 (Board Review 02). § 87(2)(b) stated that § 87(2)(b) has Alzheimer's and dementia and often calls the police when she is lonely. On October 25, 2017, § 87(2)(b) received a call from § 87(2)(b)'s home attendant, who stated that the police were at § 87(2)(b)'s apartment. § 87(2)(b) and § 87(2)(b) immediately went to § 87(2)(b)'s apartment. PO Cifuentes and PO Caparelli were already inside the apartment when § 87(2)(b) and § 87(2)(b) arrived.

§ 87(2)(b) was interviewed at the CCRB on December 15, 2017 (Board Review 03). § 87(2)(g)

PO Cifuentes was interviewed at the CCRB on February 14, 2018 (Board Review 04). PO Cifuentes speaks Spanish fluently. On October 25, 2017, PO Cifuentes and PO Caparelli went

to § 87(2)(b) in Manhattan, to follow up on a domestic incident report generated on October 22, 2017 (Board Review 14), regarding an incident involving § 87(2)(b) and § 87(2)(b). PO Cifuentes knocked on the door and § 87(2)(b)'s home attendant answered the door. PO Cifuentes informed her in Spanish that she was from the domestic violence unit and was there to visit § 87(2)(b). The home attendant told § 87(2)(b) that the police were there to see her. § 87(2)(b) responded telling the police to come into the apartment in Spanish. PO Cifuentes and PO Caparelli entered the apartment.

PO Caparelli was interviewed at the CCRB on February 27, 2017 (Board Review 05). § 87(2)(g) PO Caparelli stated that § 87(2)(b)'s grandson and § 87(2)(b)'s son, came to the door and let the officers into the apartment. § 87(2)(b) verbally consented to the officers' entry, but PO Caparelli did not remember exactly what he said.

Additional civilian witnesses were uncooperative with providing statements to the CCRB.

The courts have held officers may enter an individual's home without a warrant if an individual provides voluntary consent. Consent is voluntary when it is a true act of will, an unequivocal product of an essentially free and unconstrained choice, People v. Gonzalez, 39 N.Y.2d 122, (Board Review 06).

All civilians present when PO Cifuentes and PO Caparelli entered the apartment, aside from § 87(2)(b) were uncooperative in providing a statement. § 87(2)(b) repeatedly said she did not remember this incident very well and all parties indicated that she had dementia, which could have impacted her memory of the incident. However, § 87(2)(b) stated she did not give officers permission to enter her apartment. § 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Jacqueline Cifuentes threatened to arrest

§ 87(2)(b) It is disputed whether or not PO Cifuentes threatened to arrest § 87(2)(b) (Board Review 02) arrived at § 87(2)(b)'s apartment and began speaking with PO Cifuentes. PO Cifuentes informed § 87(2)(b) that she was going to arrest § 87(2)(b) because he hit § 87(2)(b) on the head. § 87(2)(b) became upset and was arguing with PO Cifuentes about whether or not § 87(2)(b) should be arrested. While they were arguing, PO Cifuentes told § 87(2)(b) "If the house ain't right, I'm going to arrest you and put your mom in a home." § 87(2)(b) felt that PO Cifuentes was threatening to arrest her because § 87(2)(b) is a hoarder and her apartment was messy. § 87(2)(b) was saying "He hit me," repeatedly throughout the incident. PO Cifuentes and PO Caparelli placed § 87(2)(b) under arrest and called an ambulance for § 87(2)(b). PO Cifuentes told § 87(2)(b) that she could not go into the ambulance with § 87(2)(b) even after § 87(2)(b) explained that she was § 87(2)(b)'s medical proxy. PO Cifuentes told § 87(2)(b) that she would be arrested if she went into the ambulance with § 87(2)(b).

§ 87(2)(g)

§ 87(2)(b) (Board Review 01) did not remember if any officer threatened § 87(2)(b) § 87(2)(b)

PO Cifuentes (Board Review 04) denied that she ever threatened to arrest § 87(2)(b) § 87(2)(b). PO Cifuentes never told § 87(2)(b) “If the house ain’t right, I’m going to arrest you and put your mom in a home.” PO Cifuentes never threatened to arrest § 87(2)(b) based on the condition of § 87(2)(b)’s apartment. PO Cifuentes never threatened to arrest § 87(2)(b) if she went into the ambulance with § 87(2)(b). PO Cifuentes told § 87(2)(b) that she was not allowed in the ambulance because of the way she was yelling inside the apartment.

PO Caparelli’s (Board Review 05) statement was consistent with PO Cifuentes’ statement. PO Caparelli did not hear PO Cifuentes threaten to arrest § 87(2)(b) inside the apartment. PO Caparelli transported § 87(2)(b) to the stationhouse and was not present when the ambulance arrived at the location.

§ 87(2)(g)
Additional civilian witnesses were not cooperative with the investigation and did not provide statements. § 87(2)(g)

Allegation (D) Abuse of Authority: Lieutenant Kenneth Herrarte searched § 87(2)(b) in Manhattan.

Allegation (E) Abuse of Authority: Police Officer Jacqueline Cifuentes entered and searched § 87(2)(b) in Manhattan.

While additional officers entered and searched § 87(2)(b)’s apartment, Lt. Herrarte and PO Cifuentes had § 87(2)(b) sign the consent to search form. Therefore, Allegations D and E were pleaded against Lt. Herrarte and PO Cifuentes.

§ 87(2)(b) (Board Review 01) initially stated that she did not recall signing any document for the police. § 87(2)(b) later stated that she did receive a document to grant the officers permission to take her to the hospital. § 87(2)(b) did not recall if § 87(2)(b) told her not to sign anything. § 87(2)(b) did not recall anyone saying “gun.” As noted above, § 87(2)(b) repeatedly stated she did not recall very many details about this incident.

§ 87(2)(b) (Board Review 02) took a taxi to § 87(2)(b), where § 87(2)(b) was transported to in an ambulance. § 87(2)(b) went back to the emergency room where she saw PO Cifuentes and Lt. Herrarte holding a piece of paper and talking to § 87(2)(b). § 87(2)(b) began screaming at § 87(2)(b) in Spanish, telling her not to sign anything. § 87(2)(b) suspected that PO Cifuentes and Lt. Herrarte had § 87(2)(b) sign something to give the officers permission to search the apartment. § 87(2)(b) told § 87(2)(b) to go protect her dog because the officers were going to search the apartment. § 87(2)(b) went outside the hospital where she encountered PO Cifuentes and Lt. Herrarte in an unmarked police vehicle. Lt. Herrarte told § 87(2)(b) that there was a confirmed call of a firearm inside of § 87(2)(b)’s apartment. § 87(2)(b) became angry and told the officers that they could have just asked to search § 87(2)(b)’s apartment and they did not need § 87(2)(b) to sign the form. Lt. Herrarte and PO Cifuentes drove § 87(2)(b) back to § 87(2)(b) in Manhattan, where they met additional

officers. Lt. Herrarte, PO Cifuentes, and additional uniformed officers searched § 87(2)(b)'s apartment. The only gun in the apartment was a toy gun for the PlayStation video game console.

§ 87(2)(g)
§ 87(2)(b) stated that § 87(2)(b) opened the apartment for the officers and that officers found a "paint gun" inside the apartment.

Lt. Herrarte was interviewed at the CCRB on March 14, 2018 (Board Review 07). On October 25, 2017, Lt. Herrarte was working as the special operations lieutenant. At the PSA 4 stationhouse, an unknown female prisoner informed Lt. Herrarte that, two days prior, she had purchased drugs from § 87(2)(b) inside § 87(2)(b) in Manhattan, and observed two guns in the apartment. The female prisoner identified § 87(2)(b) after seeing him inside the cell area. Lt. Herrarte corroborated the female prisoner's description of the apartment with PO Cifuentes, confirming that the female saw the drugs inside § 87(2)(b) in Manhattan. Lt. Herrarte and PO Cifuentes went to § 87(2)(b) to speak with § 87(2)(b) and ensure that she was in a coherent state. In the emergency room, Lt. Herrarte and PO Cifuentes spoke with § 87(2)(b) in Spanish and explained that there might be guns inside her apartment. Lt. Herrarte told § 87(2)(b) that he would need her consent to search the apartment to confirm whether or not there were guns inside. § 87(2)(b) told Lt. Herrarte that this was okay. Lt. Herrarte and PO Cifuentes went back to the PSA 4 stationhouse to obtain a consent to search form.

Prior to leaving the hospital, they encountered § 87(2)(b) and informed her that they were going to have § 87(2)(b) sign the consent to search form. § 87(2)(b) was irate and did not want § 87(2)(b) to sign the form. Approximately 15 to 20 minutes later, Lt. Herrarte and PO Cifuentes returned to § 87(2)(b) with a consent to search form. Based on his conversation with § 87(2)(b) earlier, Lt. Herrarte felt that § 87(2)(b) was coherent and could sign the form. At the hospital, Lt. Herrarte provided § 87(2)(b) with the form, and then explained in Spanish what the form said, since the form was in English. § 87(2)(b) confirmed that she understood what the form said, and then signed the form. § 87(2)(b) told the officers that § 87(2)(b) could let them into the apartment. Lt. Herrarte could hear § 87(2)(b) screaming from the lobby telling § 87(2)(b) not to sign the form. Lt. Herrarte never learned that § 87(2)(b) had dementia or any disease that would have impacted her ability to sign the consent to search form. Lt. Herrarte never got the sense while speaking with § 87(2)(b) that she had a dementing disease.

Lt. Herrarte and PO Cifuentes went back to the PSA 4 stationhouse to assemble a team to search the apartment and to inform Capt. John Potkay of what was happening. After assembling a team, Lt. Herrarte and PO Cifuentes went back to § 87(2)(b), where they saw § 87(2)(b) on the sidewalk outside. Lt. Herrarte explained that the officers needed to search for guns inside the apartment and that he needed her to open the apartment door. Lt. Herrarte and PO Cifuentes drove § 87(2)(b) back to § 87(2)(b) in Manhattan, where they encountered § 87(2)(b) and § 87(2)(b) let the officers into the apartment. Lt. Herrarte, PO Cifuentes, and additional officers entered the apartment. Inside the apartment, the officers searched the couch, three closets in the living room, and § 87(2)(b)'s room. In § 87(2)(b)'s room, there was a paintball gun, but Lt. Herrarte told § 87(2)(b) that was not why they were at the apartment. Approximately 20 minutes later, the officers left the apartment without having recovered any guns.

PO Cifuentes (Board Review 03) learned from § 87(2)(b) that § 87(2)(b) was "crazy," while in § 87(2)(b)'s apartment the first time. However, § 87(2)(b)

did not elaborate on what she meant by saying § 87(2)(b) was “crazy.” § 87(2)(b) called § 87(2)(b)'s doctor and gave the phone to PO Cifuentes. § 87(2)(b)'s doctor informed PO Cifuentes that § 87(2)(b) had dementia, but that it was not serious. PO Cifuentes went with § 87(2)(b) to the hospital with § 87(2)(b). Approximately two and a half hours after arriving at the hospital, PO Cifuentes returned to the PSA 4 stationhouse to process § 87(2)(b)'s arrest. At the stationhouse Lt. Herrarte informed PO Cifuentes that a female prisoner reported to him that she purchased drugs off of § 87(2)(b) and saw a gun inside the apartment. PO Cifuentes and Lt. Herrarte went back to the hospital to speak with § 87(2)(b). At the hospital, PO Cifuentes informed § 87(2)(b) in Spanish that there might be a gun inside her apartment and asked § 87(2)(b) if officers could search the apartment. § 87(2)(b) appeared to understand what PO Cifuentes was saying and told PO Cifuentes that it was fine for officers to search the apartment. PO Cifuentes and Lt. Herrarte had § 87(2)(b) sign the fly page of PO Cifuentes memo book consenting to the search (Board Review 08). PO Cifuentes and Lt. Herrarte were the only people present when § 87(2)(b) signed the memo book. § 87(2)(b) was screaming in the hospital telling § 87(2)(b) not to talk to officers anymore and not to sign anything. PO Cifuentes and Lt. Herrarte went back to the PSA 4 stationhouse and spoke with Capt. Potkay, who informed them that they needed to have § 87(2)(b) sign an official consent to search form. PO Cifuentes and Lt. Herrarte went back to the hospital to have § 87(2)(b) to sign a consent to search form. PO Cifuentes translated the form into Spanish for § 87(2)(b) and explained what the form meant in Spanish. § 87(2)(b) signed the form. Lt. Herrarte explained to § 87(2)(b) that they had reason to believe that there was a gun inside the apartment and that § 87(2)(b) provided the officers with consent to search the apartment. § 87(2)(b) told the officers that it was okay and that they could search the apartment. PO Cifuentes and Lt. Herrarte gave § 87(2)(b) a ride back to the apartment from the hospital. Additional officers met PO Cifuentes and Lt. Herrarte at the apartment. PO Cifuentes stood outside the apartment while Lt. Herrarte and other officers conducted the search. Nothing was recovered from the apartment. PO Cifuentes denied that there was any reason that the officers got § 87(2)(b)'s consent to search instead of freezing the apartment and getting a search warrant. PO Cifuentes stated that Lt. Herrarte made the decision to obtain § 87(2)(b)'s consent.

The Consent to Search Form (Board Review 09) noted that § 87(2)(b) signed the form at 5:37 p.m. on October 25, 2017, consenting to a complete search of § 87(2)(b) in Manhattan.

Multiple HIPAA forms were mailed to § 87(2)(b) with instructions for how to fill them out. § 87(2)(b) agreed to assist § 87(2)(b) and to sign the forms, given that she was § 87(2)(b)'s healthcare proxy. However, § 87(2)(b) and § 87(2)(b) were uncooperative with returning the HIPAA forms. Therefore, § 87(2)(b)'s medical records regarding this incident could not be obtained.

The courts have held officers may enter an individual's home without a warrant if an individual provides voluntary consent. Consent is voluntary when it is a true act of will, an unequivocal product of an essentially free and unconstrained choice, People v. § 87(2)(b) 39 N.Y.2d 122, (Board Review 06).

A lawful search may be conducted without a warrant where permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected, People v. Adams 53 N.Y.2d 1, (Board Review 15).

While § 87(2)(b) did not remember signing the consent to search form, the form received from PSA 4 confirmed that she did sign the form. Additionally, § 87(2)(b)s and officers' testimonies all indicated that § 87(2)(b) signed the form. While there may have been a concern regarding § 87(2)(b)s ability to voluntarily consent due to her medical diagnosis of dementia, the officers did make an effort to determine whether or not her condition impacted her mental state during the incident. Specifically, PO Cifuentes spoke with § 87(2)(b) doctor, who informed her that her dementia was not serious. Lt. Herrarte spoke with § 87(2)(b) prior to having her sign the form and determined she was coherent and could sign the form. Further, while § 87(2)(b) initially objected to the search, all parties testified that § 87(2)(b) consented to the officers' search of the apartment after learning that there was a confirmed report of a gun and that § 87(2)(b) signed the form. While § 87(2)(b) did not live at the location and § 87(2)(b) was the only person on the lease, § 87(2)(b) is § 87(2)(b)s daughter and apparent caretaker. § 87(2)(b) and officers testified that § 87(2)(b) provided the officers with access to the apartment to conduct the search. § 87(4-b)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has filed § 87(2)(b) complaints with the CCRB since 2001 (Board Review 12).
- This was § 87(2)(b)s first complaint with the CCRB (Board Review 13).

- PO Cifuentes has five allegations stemming from two complaints over her 16 year tenure with the NYPD. None of the allegations were substantiated § 87(2)(g)
- PO Caparelli has three allegations stemming from three complaints over his 15 year tenure with the CCRB. None of the allegations were substantiated § 87(2)(g)
- Lt. Herrarte has six allegations stemming from three complaints over his 12 year tenure with the NYPD. All of the cases were open as of May 31, 2018, and therefore none of the allegations were substantiated.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because § 87(2)(b)
- § 87(2)(b) had no criminal convictions in the past 10 years.
- § 87(2)(b) had no criminal convictions in the past 10 years.

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date